IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 568/1999

RAMDEO SINGH Vs. STATE OF RAJASTHAN & ORS.

DATE: 23.08.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Hanuman Choudhary for the petitioner.
Mr. G.K. Garg with
Mr. Saransh Saini for the respondents.

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Brief facts of the present case are that the petitioner having a land bearing Khasrar No. 497/2 situated at Jhunjhunu. Out of this land, the Municipal Board, Jhunjhunu wanted to acquire a piece of land for construction of a road. It is not disputed that 1 Bigha 3 Biswa land has been acquired by the Municipal Board and the road has already been constructed, though it is disputed that initially 40 feet wide road was to be constructed, whereas the respondents constructed 60 feet wide road.

As per the letter dated 03.12.96 written by the Executive Officer, Municipal Board, Jhunjhunu, proposal was sent to the petitioner that if he is ready to give his land @ Rs. 180/- per sq. yard, then give

his consent to this effect so that the same may be placed before the C.M.C. for taking decision on such proposal. The petitioner responding to the said proposal vide his letter dated 11.12.96 [Annexure-2 (i)], agreed on the rate quoted by the Executive Officer i.e. @ Rs. 180/- per sq. yard but in addition to that he also prayed for compensation of Rs. 50,000/- for Pakka construction and boundary wall which have been demolished by the Municipal Board.

The conditional proposal which was submitted by the petitioner was considered by the Monitory Committee in its meeting held on 12.12.96 under the Chairmanship of District Collector, Jhunjhunu in presence of the Executive Officer, Municipal Board, Alwar, Deputy Town Planner, Jaipur City, Jaipur, Executive Engineer, PHED, Jhunjhunu and the Executive Engineer, RSEB, Jhunjhunu and the Monitory Committee decided that the compensation to the tune of Rs. 80,000/- per Bigha awarded in favour of the petitioner as the existing rate in nearby area is Rs. 50,000/- per Bigha but after including the penal interest of three years, rate is enhanced to Rs. 80,000/- from Rs. 50,000/- per Bigha and for total land of 1 Bigha and 3 Biswa, cheque of Rs. 92,000/- was sent to the petitioner.

During the course of arguments, it has been brought to the notice of this Court that ciruculars have been issued by the Department of UDH on 13th December, 2001 and so also on 27th October, 2005 whereby the Government has proposed to provide 15%/20% of developed land for allotment in relation to land which has been acquired.

Counsel for the respondents, as per instructions from the Executive Commissioner, who was present in person, submits that they have received representation from petitioner in this regard and they are ready to consider his application in terms of circular dated 13th December, 2001/27th October, 2005 for allotment of land.

It was also made clear at that time that such representation filed by the petitioner can only be considered by the Committee constituted by the Government. Therefore, liberty was given to the respondents to consider the petitioner's application for allotment and submit their proposal to this Court after seeking permission from the concerned department, if required.

Pursuant to the order passed by this Court on 22.05.2007, learned counsel Mr. Garg, appearing for the Municipal Board submitted a compliance report in the

form of affidavit which is given by Mr. Rajendra Joshi, Commissioner, Municipal Board, Jhunjhunu. In the above affidavit it has been submitted that pursuant to the order dated 22.05.2007 passed by this Court, a committee was constituted comprising of Chairman of Municipal Board Smt. Bharti Tibra, Rajendra Kumar Joshi, the present deponent being Commissioner and Om Prakash Sharma, Assistant Accounts Officer of Municipal Board, Jhunjhunu. The meeting of the Committee was held on 12.07.2007, in which the Committee has decided that in the earlier meeting of the Monitory Committee held on 12.12.96 already a decision had been taken for acquisition of land of Khasra Nos. 497/2, 498, 493, 491 and 475/1, wherein the agricultural land was decided to be acquired @ Rs. 80,000/- per Bigha which attained finality and in lieu thereof the payment of compensation has also been made. The petitioner has not challenged the aforesaid decision taken by the Monitory Committee on 12.12.96.

Further the committee has also considered two circulars dated 13.12.2001 and 27.03.2005 which have been referred by the petitioner and decided that they are not applicable in case of the petitioner and that 15% land in lieu of acquisition is not attracted. It is also denied that Rs. 180/- per sq. yard was agreed. In

fact the matter was to be kept before the Monitory Committee for determining the compensation to be awarded.

I have carefully gone through the reliefs claimed by the petitioner, which are as under:-

> (i) the non-petitioners may be directed to pay the compensation to the petitioner @ Rs. 180/- sq. yard for his land in question acquired by the Respondents No.2 which is calculated to Rs. 6.31 lacs.
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> (ii) the non-petitioner may also be directed to pay the interest @ Rs. 24% P.A. to the petitioner on the amount of Rs. 6.31 lacs from date of acquisition and till date of payment.
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> (iii) Any other order which may deemed fit, just and proper and in the interest of justice may also kindly be passed in favour of the petitioner."

As per the relief, the petitioner is claiming writ, order or direction directing the respondents to pay compensation to the petitioner @ Rs. 180/- per sq. yard for his land, which has been acquired by the respondent No.2 and has calculated to Rs. 6.31 lacs. In addition to this, the petitioner has also prayed that the respondents be directed to pay interest @ 24% p.a. on the amount of Rs. 6.31 lacs from the date of

acquisition till the date of payment.

I have also carefully gone through the judgment relied by the learned counsel for the petitioner in support of his submissions, rendered by the Hon'ble Supreme Court in the case of **Nelson Fernandes and Ors. Vs. Spl. L.A.O. South Goa & Ors., 2007(2) Supreme 800,** wherein the Hon'ble Supreme Court has held as under:-

> "The High Court has adopted a rough and ready method for making deductions which is impermissible in law. We have already noticed the valuers report. No reason whatsoever was given by the Reference Court or by the High Court as to why the report of the valuer and her evidence cannot be relied on. In our opinion, the compensation awarded by the High Court had no basis whatsoever and was not supported by cogent reasons and that it did not consider the future prospect of the development of the land in question. The High Court also did not assess the injury that the appellant is likely to sustain due to loss of his future earnings from the said land and also did not assess the damage already suffered due to diminution of the profits of the land between the time of publication of the notice and time of the collector taking possession. The Division Bench of the High Court has miserably erred in passing the order impugned thereyy reducing the rate of compensation from Rs. 192/- to Rs. 38/- and in utter mis-reading of the evidence on record and acted in a flagrant error of law and facts. In our

view, the orders passed by the Division Bench resulted in manifest injustice being caused to the appellants. The High Court also erred in passing the order by holding that the opinion of the government approved valuer was not based on any opinion method of valuation but solely on the basis of facilities available to the land. In our view, the High Court ought to have appreciated that the government approved valuer is an expert in her field and the opinion of such an expert ought not to have been rejected shabbily.

Both the Special Land Acquisition Officer, the District Judge and of the High Court have failed to notice that the purpose of acquisition is for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation. This Court held that the purpose for which the land is acquired must also be taken into consideration in fixing the market value and the deduction of development charges.

We are not, however, oblivious of the fact that normally, 1/3 deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land acquired must also be taken in to consideration. In the instant case, the land was a acquired for the construction of new BG line for the Konkan Railways. Where lands are acquired for specific purposes deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise. Therefore, the order passed by the High Court is liable to be set aside and in view of the availability of basic civic amenities such as school, bank, police

> station, water supply, electricity, high way, transport, post, petrol pump, industry, telecommunication and other businesses, the claim of compensation should reasonably be fixed @ Rs. 250/- per sq. mtr. with the deduction of 20%. The appellant shall be entitled to all other statutory benefits such as solatium, interest etc. etc. The appellants also will be entitled to compensation for the trees standing on the said land in a sum of Rs. 59,192 as fixed."

Upon perusal of the averments made in the writ petition as well as the reply as also the compliance report submitted in the form of affidavit by the respondents, it is evident from Annexure-4 that the Monitory Committee in its meeting held on 12.12.96, has decided that compensation @ Rs. 80,000/- per Bigha be paid to the petitioner in lieu of acquisition of 1 Bigha and 3 Biswa land and the same has been paid and the proposal of the petitioner @ Rs. 180/- per sq. yard is not accepted by the Committee considering the fact that the land which is to be acquired, is agricultural land.

Further as averred by the learned counsel for the respondents that the proposal was conditional as is evident by bare perusal of Anneuxre-2(i) and Annexure-2 (ii), the conditional letters wherein in addition to Rs. 180/- per sq. yard, Rs. 50,000/- were also claimed

as compensation and it cannot be treated to be unconditional offer.

Now in the light of the circulars dated 13.12.2001 and 27.10.2005 which were later on issued during pendency of the writ petition, as per the directions issued by this Court vide order dated 22.05.2007, the same has been considered by the Committee and the Committee has given its compliance report, whereby it is stated that these circulars are not applicable to the instant case and the decision which was earlier taken by the Monitory Committee in its meeting held on 12.12.96, has not been challenged and attained finality.

Upon bare perusal of the reliefs claimed by the petitioner, it also reveals that this writ petition has been filed taking advantage of the subsequent circulars after two years and the petitioner claimed the aforesaid reliefs on the basis of the Annexure-1 dated 03.12.96 written by the Executive Officer, Municipal Board, Jhunjhunu and as already observed herein above, this Court thought it proper to consider the case of the petitioner in the light of the subsequent circulars dated 13.12.2001 and 27.10.2005 and the same have also been considered by the Committee and the Committee has not considered the offer of the

petitioner as the Monitory Committee had already decided to pay compensation to the petitioner @ Rs. 80000/- per Bigha and the total compensation for the acquired land of 1 Bigha and 3 Biswa is already sent to the petitioner.

In view of the aforesaid observations, as the petitioner has not challenged the decision of the Monitory Committee passed way back in the year 1996 i.e. dated 12.12.96, therefore, after lapse of time, he cannot take advantage of the subsequent circulars without challenging the decision of the Monitory Committee which attained finality. Therefore, I find no merit in the writ petition.

Consequently, the writ petition fails and the same is hereby dismissed.

The stay application also stands rejected.

(K.S. RATHORE),J.

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